

Appeal from Order No 78 of 95

Date of decision: 02/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RM SHETH ]

VS

STATE OF GUJARAT

Appearance: MR AJ SHASTRI for Petitioner MR SV RAJU for Respondent No. 1  
Mr.M.R.Anand,GP and Sr. Advocate and Mr. N.N.Pandya, AGP for respondent  
No.2.

Coram : MR.JUSTICE K.R.VYAS

ORAL JUDGEMENT

APPEAL FROM ORDER NO.78 OF 1995.

Date of Decision:2-2-1996

For approval and Signature:

THE HON'BLE MR. JUSTICE K.R.VYAS

1. Whether Reporters of Local Papers may be allowed to see

the judgment ?

2. To be referred to the Reporter or not ?

3. Whether Their Lordships wish to see the fair copy of judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge ?

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Mr.A.J.Shastri, Advocate for the appellant.

Mr. S.V.Raju, Advocate for respondent No.1.

Mr. M.R.Anand,GP and Sr. Advocate with Mr.N.N.Pandya, AGP for respondent No.1.

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CORAM;K.R.VYAS,J.

February,2, 1996

ORAL JUDGMENT :

The learned City Civil Judge, Ahmedabad by his order dated 24.3.1992 rejected the Notice of Motion , EX.6 for injunction and vacated the injunction granted earlier in favour of the appellant. It is the case of the appellant that he is the owner of land bearing Survey Nos. 90, 91, 92 and 93/1 of village Hansol, now merged with the municipal limits of Sardarnagar area of Ahmedabad Municipal Corporation. It is also the case of the appellant that he is in peaceful possession of these lands since more than 60 years and that the lands in question have not been acquired by the respondent Authority nor any compensation been paid to him nor possession has been taken over from him.

Learned trial judge after considering the material on record has come to the conclusion that the land was acquired many years before by the National Airport Authority, respondent no.1 herein, and the suit lands are lying barren since 1951-52. The learned trial judge further observed that as far as Survey No. 90 is concerned, the name of Aerodrome is shown by the Talati-cum-Mantri as the occupier. In view of this finding recorded by the learned trial judge that there is every reason to believe that the suit land was acquired by the Government for Aerodrome , the appellant is not in possession of the suit lands on the date of filing of the suit. In view of this, the learned trial

judge has concluded that there is no prima facie case made out by the appellant and, there is also no loss of income, if injunction is not granted in favour of the appellant and the balance of convenience is also not in favour of the appellant. It appears that the said order dated 24.3.1992 was challenged after the delay of about 1500 days which was, of course, condoned by this court and has also continued the order directing the parties to maintain status quo till the date.

Having heard Mr. A.J. Shashtri, learned advocate for the appellant and Mr. S.V. Raju learned advocate for the respondent no. 1 herein, I am of the view that the trial court has not committed any error in rejecting the application Exh. 6 filed by the appellant. No new contentions have been advanced by the learned advocates before this court. Perusing the papers produced before me, it appears that the lands in question i.e. Survey No. 90. 91. 92 and 93/1 were acquired for the purpose of Provincial Government as can be seen from the Bombay Government Gazette, dated March 31, 1949. The said Notification clearly states that in exercise of powers conferred by Section 5 of the act, read with the Government of Bombay, Revenue Department, Notification No. 2198/49 dated 23rd October, 1946, a notice was given that the Provincial Government have decided to acquire the said lands described in the schedule annexed hereto. In pursuance thereof, it was declared that, in pursuance of sub-section-2 of Section -5 of the Act, the said lands shall, on and from the beginning of the day on which the notice is published in the official gazette, vest absolutely in the Provincial Government free from all encumbrances and the period of requisition of such lands shall end.

The schedule also clearly disclosed that the suit lands in question, in the extract of 7/12, were shown as barren lands since 1950-51 up to 1969-70 and in the column of "Khed Hukk", Aerodrome is shown. Mr. Shashtri has made a grievance that in the subsequent application of 1958, except survey no. 90, other survey numbers not shown and, therefore, in the submission of Mr. Shashtri only survey no. 90 was acquired. I am not impressed by the said submission as this could be a matter of evidence in the trial but prima-facie it appears that lands in question have been acquired for the purpose of Aerodrome.

3. Mr. Shashtri also submitted that he is in

possession of the lands in question and therefore, without following due procedure of law, his possession is required to be protected. Considering the material on record, prima-facie it appears that the lands are already acquired since 1949 and the lands has remained as barren lands. Even if the appellant succeeds in the suit, he would be entitled to get the amount of compensation, if not paid and therefore, at this stage no order of injunction can be passed against the respondents as the lands in question are required for the extension of the Run-way of the Airport. Mr. Shashtri wanted to produce certain documents by way of draft amendment. I am of the view that no new documents can be produced at this stage as the suit is pending where the parties have a right to produce the same. Hence, the draft amendment is rejected.

4. In view of the above discussion, I see no merits in the appeal and this Appeal From Order is dismissed summarily. Mr. Shashtri at this stage requests that the status-quo order granted earlier may be continued for some time to enable him to move the higher forum. Considering the facts and circumstance of the case, ad interim relief granted earlier shall continue for a period of two weeks from today.

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